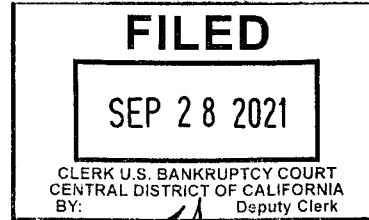


ORIGINAL

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6 Attorneys for Creditor Sunbelt Controls, Inc.

8 UNITED STATES BANKRUPTCY COURT

9 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

10

11 In re

12 THE SOURCE HOTEL, LLC,

13 Debtor.

Case No. 8:21-bk-10525-ES
Chapter 11

**SURREPLY AND FURTHER
OBJECTION OF CREDITOR SUNBELT
CONTROLS, INC. TO REPLY BRIEF OF
DEBTOR TO OBJECTION TO
DEBTOR'S MOTION FOR ENTRY OF
ORDER: (1) AUTHORIZING SALE OF
SUBSTANTIALLY ALL OF THE
DEBTOR'S ASSETS; (2) AUTHORIZING
THE DEBTOR'S ASSUMPTION AND
ASSIGNMENT OF GROUND LEASE
AND DETERMINING CURE AMOUNT;
(3) WAIVING THE 14-DAY STAY
PERIODS SET FORTH IN
BANKRUPTCY RULES 6004(H) AND
6006(D); AND (4) GRANTING RELATED
RELIEF; DECLARATION OF JOHN E.
JACQUES; DECLARATION OF DUSTIN
LOZANO**

Date: September 30, 2021
Time: 2:00 p.m.
Place: ZoomGov

BY FAX

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**Sunbelt Requests That The Court Consider This Surreply Because Debtor Raised New
Issues In Its Reply That Are Essential To The Determination Of The Motion**

Leave of court to file a surreply is proper when a reply brief raises new issues. *Gebretsadike v. Travelers Home & Marine Ins. Co.* 103 F.Supp.3d 78, 86 (D. D.C. 2015). Here, Sunbelt requests leave of court to file this surreply because Debtor raises new issues in its reply. Specifically, Debtor contends for the first time that (1) Sunbelt's lien foreclosure complaint was filed untimely and (2) Shady Bird's deed of trust takes priority over Sunbelt's mechanics lien because Sunbelt commenced work after Shady Bird's deed of trust was recorded. Reply, 10:3-18. Debtor did not raise these issues in its Motion. Debtor is wrong about both issues.

A. Sunbelt's Complaint was Filed Timely

Debtor contends that Sunbelt's lien foreclosure complaint was untimely because Sunbelt filed its complaint on May 26, 2020, which was more than 90 days from the recording of Sunbelt's lien on January 31, 2020. Reply, 9:15-24. But **Sunbelt's complaint was not filed on May 26, 2020, but rather on April 21, 2020**, which was before its deadline to file its complaint. Due to the shutdown of the Orange County Superior Court due to Covid 19, the court did not conform Sunbelt's complaint until May 26, 2020, but filing records from the undersigned counsel's attorney service confirm that Sunbelt's complaint was filed timely. Declaration of John E. Jacques. Debtor has no objection to Sunbelt filing a surreply to address this issue. Declaration of Dustin Lozano.

B. Sunbelt's Lien Takes Priority Over Shady Bird's Deed of Trust

If construction commences before a deed of trust is recorded, mechanics liens have priority and all mechanics lien claims relate back to commencement. *In re Showplace Square Loft Co., LLC* (Bankr. N.D. Cal. 2003) 289 B.R. 403, 407. Debtor's Motion concedes that hotel development began in 2014. Motion, 7:17-18. And Google Maps images show that the hotel was built as of May 2016 (before Shady Bird's deed of trust). Declaration of Dustin Lozano. Hence, Construction commenced prior to the recording of Shady Bird's deed of trust, and Sunbelt's mechanics lien claim is senior to the junior lien of Shady Bird.

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1 DATED: September 28, 2021

HUNT ORTMANN PALFFY
NIEVES DARLING & MAH, INC.

2
3
4 By:



DUSTIN LOZANO

Attorneys for Creditor Sunbelt Controls, Inc.

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DECLARATION OF JOHN E. JACQUES

I, John E. Jacques, declare as follows:

1. I am the Operations Manager for County Legal Attorney Service ("County Legal"), the attorney service for Hunt Ortmann Palffy Nieves Darling & Mah, Inc. ("Hunt Ortmann"), attorneys of record for Creditor Sunbelt Controls, Inc. If called as a witness, I could and would competently testify and have personal knowledge of the facts stated herein except where stated upon information and belief.

2. On April 21, 2020, County Legal eFiled with the Orange County Superior Court a complaint, summons, and civil case cover sheet. The complaint was entitled "*Sunbelt Controls, Inc. v. Source Hotel, LLC, et al.*" A true and correct copy of the complaint, summons, and civil case cover sheet and the confirmation of filing is attached as **Exhibit A**.

3. On April 21, 2020, County Legal sent to Hunt Ortmann a Court eFile Order Confirmation confirming that the court received County Legal's Court eFiling order to eFile the Complaint, Summons, and Civil Case Cover Sheet at the Central Justice Center. The documents were electronically transmitted to the court on Tuesday, April 21, 2020 and placed in the queue for review by the Clerk. A true and correct of the Court eFile Order Confirmation and the documents that were filed are attached hereto as **Exhibit B**.

4. On around the date that the complaint, summons, and civil case cover sheet were filed, the Orange County Superior Court was shut down due to Covid 19 and complaints were not being conformed the same day that they were filed. This complaint was conformed on May 26, 2020, which is not the correct date that the complaint was filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on this 28th day of September, 2021, at Pasadena, California.

John E. Jacques

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EXHIBIT A

Shirley K. Stickley

From: donotreply@countylegalsvc.mail.legalconnect.com
Sent: Tuesday, April 21, 2020 4:11 PM
To: socalorders
Subject: Order Confirmation for SUNBELT CONTROLS VS. THE SOURCE HOTEL, Case # Not Assigned

Court eFile Order Confirmation

This confirms County Legal Service Inc. has received your Court eFiling order to eFile the following document(s):

Complaint;
Summons;
Civil Case Cover Sheet

At: Central Justice Center

Your document(s) have been electronically transmitted to the court **today (Tue, Apr 21, 2020)** and placed in the queue for review by the Clerk.

Once your eFile order has been reviewed you will receive a status update with details stating if your documents were Accepted, Partially Accepted or Rejected by the Clerk, followed by your conformed or received copy(s) or else rejection notice.

Should you have any questions, please [contact us](https://www.countylegalsvc.com) or log in and manage your cases and orders at <https://www.countylegalsvc.com>

Thank you for using County Legal Service Inc..

Order(s): **3535706**

Billing Code: **SysGen**

eFile Transaction Number(s): **41084189**

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111 N. Market Street Suite 116, San Jose, CA 95113
[Contact Us](#)

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6 Attorneys for Plaintiff Sunbelt Controls, Inc.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
10

11 SUNBELT CONTROLS, INC., a Delaware
corporation,

12 Plaintiff,

13 vs.
14

15 THE SOURCE HOTEL, LLC, a California
limited liability company; IRON
16 MECHANICAL, INC., a California
corporation; and DOES 1 through 20,
inclusive,

17 Defendants.
18

CASE NO.

COMPLAINT FOR:

1. **MONEY DUE ON CONTRACT**
2. **FORECLOSURE OF MECHANICS LIEN**
3. **ACCOUNT STATED**
4. **OPEN BOOK ACCOUNT**
5. **REASONABLE VALUE OF LABOR AND MATERIALS FURNISHED**

19
20 **FIRST CAUSE OF ACTION**

21 **(Money Due on Contract - Against Iron Mechanical, Inc. and Does 1 through 5)**

22 1. At all times herein mentioned, Sunbelt Controls, Inc. ("SUNBELT" or "Plaintiff") was
23 a corporation duly organized and existing under and by virtue of the laws of Delaware with principal
24 offices in the County of Los Angeles, California. SUNBELT was duly licensed by the Contractors
25 State License Board to perform the work herein alleged.

26 2. At all times herein mentioned, Iron Mechanical, Inc. was and is a California
27 corporation with its principal place of business in Sacramento, California. Iron Mechanical, Inc. and
28 Does 1 through 5 are referred to herein as "Iron Mechanical".

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1 3. At all times herein mentioned, The Source Hotel, LLC was and is a California limited
2 liability company with its principal place of business in Orange County, California. The Source Hotel,
3 LLC and Does 6 through 10 are collectively referred to as "Owner".

4 4. The true names and capacities, whether individual, corporate, associate, or otherwise of
5 the defendants sued herein as Does 1 through 20, inclusive, are unknown to Plaintiff who, therefore,
6 sues said defendants by such fictitious names, and Plaintiff will amend this complaint to show such
7 true names and capacities when the same have been ascertained. Plaintiff is informed and believes and
8 thereon alleges that each defendant designated as a Doe is in some manner or means of degree
9 responsible for the damages suffered by Plaintiff, as alleged in this complaint.

10 5. At all times herein mentioned, each of the Defendants were the agent and employee of
11 each of the remaining Defendants and were at all times herein mentioned acting within the scope of
12 such agency and employment.

13 6. On or about March 2, 2018, SUNBELT entered into a written subcontract agreement
14 (the "Contract") with Iron Mechanical in which SUNBELT agreed to furnish labor, equipment, and
15 materials for the furnishing and installation of automation, management, and control systems for
16 HVAC and plumbing on a construction work of improvement known as the Source Hotel located at
17 6986 Beach Boulevard, Buena Park, CA 90621 (the "Project") in exchange for which Iron Mechanical
18 agreed to pay SUNBELT the sum of \$622,142. Approved change orders increased the Contract price
19 to \$721,791.

20 7. SUNBELT is informed and believes and thereon alleges that Owner was and is the
21 owner or reputed owner of the real property on which the Project is located.

22 8. SUNBELT performed all conditions, covenants, and obligations on its part to be
23 performed pursuant to the Contract except where excused by Iron Mechanical.

24 9. Although SUNBELT demanded payment in the amount of \$721,791, Iron Mechanical
25 paid only \$487,138, and there remains due, owing, and unpaid to SUNBELT from Iron Mechanical
26 the principal sum of \$234,653, plus interest at the maximum rate allowed by law, accruing as follows
27 until paid:
28

Invoice Number	Invoice Amount	Interest Accrues From
PB145475	\$32,552	08/13/19
PB148775	\$129,922	01/29/20
R 148776	\$72,179	01/29/20

SECOND CAUSE OF ACTION

(Foreclosure of Mechanics Lien – Against All Defendants)

10. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1 through 9 as though fully set forth herein.

11. SUNBELT, pursuant to and within the time and in the manner required by Section 8200 of the Civil Code, sent to the general contractor, the lender for the Project, and the owner or reputed owner by certified mail return receipt requested, a written notice containing a general description of the labor and materials to be furnished by SUNBELT, the name of the person who contracted for the purchase of said materials, a description of the job site sufficient for identification and a statement that if bills were not paid in full for labor and materials furnished that the improved property may be subject to a mechanics lien.

12. On or about January 31, 2020, SUNBELT recorded a document entitled "Mechanics Lien" in the Orange County Recorder's Office as Document No. 2020000043007. The lien was recorded within the time required by law and was duly signed and verified as to the following:

a. A statement of SUNBELT's demand after deducting all just credits and offsets, to wit, the principal sum owed at the time of the recording of the lien in the amount of \$234,653, plus interest;

b. The name of said owners or reputed owners, to-wit, The Source Hotel, LLC, 6940 Beach Boulevard, Suite D-501, Buena Park, CA 90621;

c. A general statement of all labor and construction materials furnished by Plaintiff, for the Project, to-wit, HVAC controls;

d. The name of the person by whom Plaintiff was employed or to whom Plaintiff was employed, to-wit, Iron Mechanical, Inc., 575 Anton Boulevard, 3rd Floor, Costa Mesa, California 92626;

e. A description of the property sought to be charged with the lien sufficient for

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1 identification, to-wit, 6986 Beach Boulevard, Buena Park, CA 90621, APN Nos. 276-361-20 and 276-
2 361-22.

3 13. That SUNBELT paid for verifying and recording the claim of lien the sum of \$91.00,
4 no part of which has been paid.

5 14. That said real property, and the whole thereof, is required for the convenient use and
6 occupation of the work of improvement hereinabove referred to.

7 15. The work of improvement which is the subject matter of this action was completed
8 within 90 days of the recordation of SUNBELT's Mechanics Lien, and no valid Notice of Completion
9 or Cessation has been recorded or filed in connection with said project.

10 16. That the Defendants, and each of them, claim some right, title and interest in or to the
11 real property, buildings and premises hereinabove described; that the claim or title of or interest of
12 said Defendants, and each of them, in and to said real property, buildings and premises is subsequent
13 to, junior to and subject to SUNBELT's claim of lien as hereinabove set forth.

14 17. That the Defendant Owner has been and now is the fee owner in the work of
15 improvement hereinabove referred to.

16 **THIRD CAUSE OF ACTION**

17 **(Account Stated – Against Iron Mechanical, Inc. and Does 1 through 5)**

18 18. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1
19 through 17 hereinabove set forth.

20 19. Within four years last past in the City of Buena Park, County of Orange, State of
21 California an account was stated between SUNBELT and Iron Mechanical upon which the sum of
22 \$234,653 was agreed to be the balance due SUNBELT from Iron Mechanical, which sum Iron
23 Mechanical agreed to pay.

24 20. Although duly demanded, Iron Mechanical refuses to pay any part thereof, and there is
25 now due, owing, and unpaid from Iron Mechanical to SUNBELT the principal sum of \$234,653, with
26 interest thereon at the maximum rate allowed by law, accruing as alleged herein, until paid.

27

28

FOURTH CAUSE OF ACTION

(Open Book Account – Against Iron Mechanical, Inc. and Does 1 through 5)

21. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1 through 20 hereinabove set forth.

22. Within four years last past in the City of Buena Park, County of Orange, State of California, Iron Mechanical became indebted in the amount of \$234,653 on an open book account for HVAC controls furnished to Iron Mechanical by SUNBELT at the special instance and request of Iron Mechanical.

23. Although duly demanded, Iron Mechanical failed to pay said sum in full, and there is now due, owing, and unpaid to SUNBELT from Iron Mechanical the principal sum of \$234,653, together with interest thereon at the maximum rate allowed by law, accruing as alleged herein, until paid.

FIFTH CAUSE OF ACTION

(Reasonable Value of Labor and Materials Furnished – Against Iron Mechanical, Inc. and Does 1 through 5)

24. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1 through 23 hereinabove set forth.

25. Within two years last past in the City of Buena Park, County of Orange, State of California, Plaintiff sold and delivered to Iron Mechanical, equipment and materials for the furnishing and installation of HVAC controls for the reasonable value of \$234,653, which Iron Mechanical agreed to pay.

26. Although duly demanded, Iron Mechanical failed to pay any part of said sum, and there is now due, owing, and unpaid from Iron Mechanical to SUNBELT the principal sum of \$234,653, together with interest thereon at the maximum rate allowed by law, accruing as alleged herein, until paid.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For the principal sum of \$234,653, together with interest thereon at the maximum rate

1 allowed by law, accruing as follows, until paid;

Invoice Number	Invoice Amount	Interest Accrues From
PB145475	\$32,552	08/13/19
PB148775	\$129,922	01/29/20
R 148776	\$72,179	01/29/20

2
3
4
5 2. That the sum of \$234,653, together with interest thereon accruing according to proof
6 until paid, and further the sum of \$91.00 paid for verifying and recording Plaintiff's claim of lien sued
7 upon herein, and Plaintiff's costs of suit incurred herein be adjudged and decreed to be a lien upon the
8 real property described in this complaint;

9 3. That the demands of Plaintiff, and all persons having claims of lien or any interest in
10 the real property sued upon herein as aforesaid, be ascertained and adjudged and that the interests of
11 Defendants, and each of them, and the interest of any persons claiming under them, be sold under the
12 decree of this Court, according to law, to satisfy the amount of the lien so ascertained and adjudged
13 with the costs of this action, including the sum paid for verifying and recording the lien of the Plaintiff
14 sued upon herein;

15 4. That in case of deficiency arising upon said sale, Plaintiff have judgment for such
16 deficiency against the Defendant against whom it has prayed for personal judgment;

17 5. That the Clerk of the above entitled Court be directed, in said original judgment and
18 decree, to docket and enter said personal judgment hereinabove first prayed for, independently of any
19 foreclosure sale and independently of any deficiency judgment that may, after such foreclosure sale,
20 be given and entered.

21 6. That the Defendants, and each of them, and all persons claiming under them, either as
22 purchasers, encumbrancers or otherwise, may be barred and foreclosed of all rights, claims and
23 equities of redemption in and to said property and every part thereof, and that the claim of lien of
24 Plaintiff sued upon herein be adjudged a prior lien upon the lands and premises above mentioned, and
25 that Plaintiff may be the purchaser at the sale of said premises prayed for as aforesaid, and that said
26 purchaser be let into possession of said premises on production of the Sheriff's deed therefor;

27 7. For costs of suit incurred herein and attorney's fees as allowed by law; and

28 8. For such other and further relief as the Court may deem just and proper.

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1 DATED: April 21, 2019

HUNT ORTMANN PALFFY
NIEVES DARLING & MAH, INC.

2
3 By: 

4 DUSTIN LOZANO

Attorneys for Plaintiff Sunbelt Controls, Inc.

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SUM-100

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: THE SOURCE HOTEL, LLC, a California limited
(AVISO AL DEMANDADO): liability company; IRON MECHANICAL, INC., a
California corporation; and DOES 1 through 20, inclusive

YOU ARE BEING SUED BY PLAINTIFF: SUNBELT CONTROLS, INC., a
(LO ESTÁ DEMANDANDO EL DEMANDANTE): Delaware corporation

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, California 92701

CASE NUMBER.
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Dale A. Ortmann /Dustin Lozano
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

HUNT ORTMANN PALFFY NIEVES DARLING & MAH, INC.

301 N. LAKE AVE., STE. 700, PASADENA, CA 91101

(626) 440-5200

DATE:
(Fecha)

Clerk, by _____, Deputy
(Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Dale A. Ortmann, Esq. / Dustin Lozano, Esq. SBN: 94226 / 296518 HUNT ORTMANN PALFFY NIEVES DARLING & MAH, INC. 301 N. LAKE AVE., STE. 700, PASADENA, CA 91101 TELEPHONE NO.: (626) 440-5200 FAX NO. (626) 796-0107 ATTORNEY FOR (Name): Sunbelt Controls, Inc.		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Central Justice Center		
CASE NAME: Sunbelt Controls, Inc. vs. The Source Hotel, LLC, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 5
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 21, 2020

Dale A. Ortmann, Esq./Dustin Lozano, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property
Damage/Wrongful Death
Uninsured Motorist (46) (*if the
case involves an uninsured
motorist claim subject to
arbitration, check this item
instead of Auto*)

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or
toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip
and fall)
Intentional Bodily Injury/PD/WD
(e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business
Practice (07)
Civil Rights (e.g., discrimination,
false arrest) (*not civil
harassment*) (08)
Defamation (e.g., slander, libel)
(13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice
(*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer
or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open
book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections
Case
Insurance Coverage (*not provisionally
complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent
domain, landlord/tenant, or
foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal
drugs, check this item; otherwise,
report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court
Case Matter
Writ—Other Limited Court Case
Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(*arising from provisionally complex
case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of
County)
Confession of Judgment (*non-
domestic relations*)
Sister State Judgment
Administrative Agency Award
(*not unpaid taxes*)
Petition/Certification of Entry of
Judgment on Unpaid Taxes
Other Enforcement of Judgment
Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified
above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-
harassment*)
Mechanics Lien
Other Commercial Complaint
Case (*non-tort/non-complex*)
Other Civil Complaint
(*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate
Governance (21)
Other Petition (*not specified
above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult
Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late
Claim
Other Civil Petition

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center Drive MAILING ADDRESS: 700 W. Civic Center Drive CITY AND ZIP CODE: Santa Ana CA 92701 BRANCH NAME: Central Justice Center	<i>FOR COURT USE ONLY</i>
SHORT TITLE: SUNBELT CONTROLS, INC. vs. THE SOURCE HOTEL, LLC	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2020-01143598-CU-MC-CJC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: SUNBELT CONTROLS, INC., a Delaware corporation
On Behalf of: SUNBELT CONTROLS, INC.; CCMS ID: 78870781
Transaction Number: 41084189
Court Received Date: 04/21/2020
Court Received Time: 04:11:04 PM
Filed Date: 05/26/2020
Filed Time: 01:37 PM
Fee Amount Assessed: \$435.00
Case Number: 30-2020-01143598-CU-MC-CJC
Case Title: SUNBELT CONTROLS, INC. vs. THE SOURCE HOTEL, LLC
Location: Central Justice Center
Case Type: Misc Complaints - Other
Case Category: Civil - Unlimited
Jurisdictional Amount: > 25000

Case Title:

Documents Electronically Filed/Received

Status

Complaint

Accepted

Summons Issued and Filed

Rejected

RejectReason 1:

Other

Clerks Comments to submitter:
attorney information must reflect
exactly as Complaint.

Civil Case Cover Sheet

Accepted

Court Generated Documents

Payment Receipt

Comments

Submitter's Comments:

Clerk's Comments:

Alternative Dispute Resolution (ADR) Information Package
can be found on the Court public website or by entering the
following information in your internet explorer search:
*****.occourts.org/forms/local/l1200.pdf

Electronic Filing Service Provider Information

Service Provider LegalConnect

Email: support@legalconnect.com

Contact Person: Customer Support

Phone: 8009096859

1 Dale A. Ortmann, Esq., SBN 94226
ortmann@huntortmann.com
2 Dustin Lozano, Esq., SBN 296518
lozano@huntortmann.com
3 HUNT ORTMANN PALFFY NIEVES
DARLING & MAH, INC.
4 301 North Lake Avenue, 7th Floor
Pasadena, California 91101-1807
5 Phone: (626) 440-5200 Fax: (626) 796-0107
6 Attorneys for Plaintiff Sunbelt Controls, Inc.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
10

11 SUNBELT CONTROLS, INC., a Delaware
corporation,

12 Plaintiff,

13 vs.
14

15 THE SOURCE HOTEL, LLC, a California
limited liability company; IRON
16 MECHANICAL, INC., a California
corporation; and DOES 1 through 20,
17 inclusive,

18 Defendants.

CASE NO. 30-2020-01143598-CU-MC-CJC

COMPLAINT FOR:

1. **MONEY DUE ON CONTRACT**
2. **FORECLOSURE OF MECHANICS LIEN**
3. **ACCOUNT STATED**
4. **OPEN BOOK ACCOUNT**
5. **REASONABLE VALUE OF LABOR AND MATERIALS FURNISHED**

Assigned to for All Purposes:

Judge Robert J. Moss

19
20 **FIRST CAUSE OF ACTION**

21 **(Money Due on Contract - Against Iron Mechanical, Inc. and Does 1 through 5)**

22 1. At all times herein mentioned, Sunbelt Controls, Inc. ("SUNBELT" or "Plaintiff") was
23 a corporation duly organized and existing under and by virtue of the laws of Delaware with principal
24 offices in the County of Los Angeles, California. SUNBELT was duly licensed by the Contractors
25 State License Board to perform the work herein alleged.

26 2. At all times herein mentioned, Iron Mechanical, Inc. was and is a California
27 corporation with its principal place of business in Sacramento, California. Iron Mechanical, Inc. and
28 Does 1 through 5 are referred to herein as "Iron Mechanical".

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1 3. At all times herein mentioned, The Source Hotel, LLC was and is a California limited
2 liability company with its principal place of business in Orange County, California. The Source Hotel,
3 LLC and Does 6 through 10 are collectively referred to as "Owner".

4 4. The true names and capacities, whether individual, corporate, associate, or otherwise of
5 the defendants sued herein as Does 1 through 20, inclusive, are unknown to Plaintiff who, therefore,
6 sues said defendants by such fictitious names, and Plaintiff will amend this complaint to show such
7 true names and capacities when the same have been ascertained. Plaintiff is informed and believes and
8 thereon alleges that each defendant designated as a Doe is in some manner or means of degree
9 responsible for the damages suffered by Plaintiff, as alleged in this complaint.

10 5. At all times herein mentioned, each of the Defendants were the agent and employee of
11 each of the remaining Defendants and were at all times herein mentioned acting within the scope of
12 such agency and employment.

13 6. On or about March 2, 2018, SUNBELT entered into a written subcontract agreement
14 (the "Contract") with Iron Mechanical in which SUNBELT agreed to furnish labor, equipment, and
15 materials for the furnishing and installation of automation, management, and control systems for
16 HVAC and plumbing on a construction work of improvement known as the Source Hotel located at
17 6986 Beach Boulevard, Buena Park, CA 90621 (the "Project") in exchange for which Iron Mechanical
18 agreed to pay SUNBELT the sum of \$622,142. Approved change orders increased the Contract price
19 to \$721,791.

20 7. SUNBELT is informed and believes and thereon alleges that Owner was and is the
21 owner or reputed owner of the real property on which the Project is located.

22 8. SUNBELT performed all conditions, covenants, and obligations on its part to be
23 performed pursuant to the Contract except where excused by Iron Mechanical.

24 9. Although SUNBELT demanded payment in the amount of \$721,791, Iron Mechanical
25 paid only \$487,138, and there remains due, owing, and unpaid to SUNBELT from Iron Mechanical
26 the principal sum of \$234,653, plus interest at the maximum rate allowed by law, accruing as follows
27 until paid:
28

Invoice Number	Invoice Amount	Interest Accrues From
PB145475	\$32,552	08/13/19
PB148775	\$129,922	01/29/20
R 148776	\$72,179	01/29/20

SECOND CAUSE OF ACTION

(Foreclosure of Mechanics Lien – Against All Defendants)

10. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1 through 9 as though fully set forth herein.

11. SUNBELT, pursuant to and within the time and in the manner required by Section 8200 of the Civil Code, sent to the general contractor, the lender for the Project, and the owner or reputed owner by certified mail return receipt requested, a written notice containing a general description of the labor and materials to be furnished by SUNBELT, the name of the person who contracted for the purchase of said materials, a description of the job site sufficient for identification and a statement that if bills were not paid in full for labor and materials furnished that the improved property may be subject to a mechanics lien.

12. On or about January 31, 2020, SUNBELT recorded a document entitled "Mechanics Lien" in the Orange County Recorder's Office as Document No. 2020000043007. The lien was recorded within the time required by law and was duly signed and verified as to the following:

a. A statement of SUNBELT's demand after deducting all just credits and offsets, to wit, the principal sum owed at the time of the recording of the lien in the amount of \$234,653, plus interest;

b. The name of said owners or reputed owners, to-wit, The Source Hotel, LLC, 6940 Beach Boulevard, Suite D-501, Buena Park, CA 90621;

c. A general statement of all labor and construction materials furnished by Plaintiff, for the Project, to-wit, HVAC controls;

d. The name of the person by whom Plaintiff was employed or to whom Plaintiff was employed, to-wit, Iron Mechanical, Inc., 575 Anton Boulevard, 3rd Floor, Costa Mesa, California 92626;

e. A description of the property sought to be charged with the lien sufficient for

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1 identification, to-wit, 6986 Beach Boulevard, Buena Park, CA 90621, APN Nos. 276-361-20 and 276-
2 361-22.

3 13. That SUNBELT paid for verifying and recording the claim of lien the sum of \$91.00,
4 no part of which has been paid.

5 14. That said real property, and the whole thereof, is required for the convenient use and
6 occupation of the work of improvement hereinabove referred to.

7 15. The work of improvement which is the subject matter of this action was completed
8 within 90 days of the recordation of SUNBELT's Mechanics Lien, and no valid Notice of Completion
9 or Cessation has been recorded or filed in connection with said project.

10 16. That the Defendants, and each of them, claim some right, title and interest in or to the
11 real property, buildings and premises hereinabove described; that the claim or title of or interest of
12 said Defendants, and each of them, in and to said real property, buildings and premises is subsequent
13 to, junior to and subject to SUNBELT's claim of lien as hereinabove set forth.

14 17. That the Defendant Owner has been and now is the fee owner in the work of
15 improvement hereinabove referred to.

16 **THIRD CAUSE OF ACTION**

17 **(Account Stated – Against Iron Mechanical, Inc. and Does 1 through 5)**

18 18. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1
19 through 17 hereinabove set forth.

20 19. Within four years last past in the City of Buena Park, County of Orange, State of
21 California an account was stated between SUNBELT and Iron Mechanical upon which the sum of
22 \$234,653 was agreed to be the balance due SUNBELT from Iron Mechanical, which sum Iron
23 Mechanical agreed to pay.

24 20. Although duly demanded, Iron Mechanical refuses to pay any part thereof, and there is
25 now due, owing, and unpaid from Iron Mechanical to SUNBELT the principal sum of \$234,653, with
26 interest thereon at the maximum rate allowed by law, accruing as alleged herein, until paid.

FOURTH CAUSE OF ACTION

(Open Book Account – Against Iron Mechanical, Inc. and Does 1 through 5)

21. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1 through 20 hereinabove set forth.

22. Within four years last past in the City of Buena Park, County of Orange, State of California, Iron Mechanical became indebted in the amount of \$234,653 on an open book account for HVAC controls furnished to Iron Mechanical by SUNBELT at the special instance and request of Iron Mechanical.

23. Although duly demanded, Iron Mechanical failed to pay said sum in full, and there is now due, owing, and unpaid to SUNBELT from Iron Mechanical the principal sum of \$234,653, together with interest thereon at the maximum rate allowed by law, accruing as alleged herein, until paid.

FIFTH CAUSE OF ACTION

(Reasonable Value of Labor and Materials Furnished – Against Iron Mechanical, Inc. and Does 1 through 5)

24. Plaintiff realleges and incorporates herein by reference the allegations in Paragraphs 1 through 23 hereinabove set forth.

25. Within two years last past in the City of Buena Park, County of Orange, State of California, Plaintiff sold and delivered to Iron Mechanical, equipment and materials for the furnishing and installation of HVAC controls for the reasonable value of \$234,653, which Iron Mechanical agreed to pay.

26. Although duly demanded, Iron Mechanical failed to pay any part of said sum, and there is now due, owing, and unpaid from Iron Mechanical to SUNBELT the principal sum of \$234,653, together with interest thereon at the maximum rate allowed by law, accruing as alleged herein, until paid.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For the principal sum of \$234,653, together with interest thereon at the maximum rate

1 allowed by law, accruing as follows, until paid;

Invoice Number	Invoice Amount	Interest Accrues From
PB145475	\$32,552	08/13/19
PB148775	\$129,922	01/29/20
R 148776	\$72,179	01/29/20

2
3
4
5 2. That the sum of \$234,653, together with interest thereon accruing according to proof
6 until paid, and further the sum of \$91.00 paid for verifying and recording Plaintiff's claim of lien sued
7 upon herein, and Plaintiff's costs of suit incurred herein be adjudged and decreed to be a lien upon the
8 real property described in this complaint;

9 3. That the demands of Plaintiff, and all persons having claims of lien or any interest in
10 the real property sued upon herein as aforesaid, be ascertained and adjudged and that the interests of
11 Defendants, and each of them, and the interest of any persons claiming under them, be sold under the
12 decree of this Court, according to law, to satisfy the amount of the lien so ascertained and adjudged
13 with the costs of this action, including the sum paid for verifying and recording the lien of the Plaintiff
14 sued upon herein;

15 4. That in case of deficiency arising upon said sale, Plaintiff have judgment for such
16 deficiency against the Defendant against whom it has prayed for personal judgment;

17 5. That the Clerk of the above entitled Court be directed, in said original judgment and
18 decree, to docket and enter said personal judgment hereinabove first prayed for, independently of any
19 foreclosure sale and independently of any deficiency judgment that may, after such foreclosure sale,
20 be given and entered.

21 6. That the Defendants, and each of them, and all persons claiming under them, either as
22 purchasers, encumbrancers or otherwise, may be barred and foreclosed of all rights, claims and
23 equities of redemption in and to said property and every part thereof, and that the claim of lien of
24 Plaintiff sued upon herein be adjudged a prior lien upon the lands and premises above mentioned, and
25 that Plaintiff may be the purchaser at the sale of said premises prayed for as aforesaid, and that said
26 purchaser be let into possession of said premises on production of the Sheriff's deed therefor;

27 7. For costs of suit incurred herein and attorney's fees as allowed by law; and

28 8. For such other and further relief as the Court may deem just and proper.

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1 DATED: April 21, 2019

HUNT ORTMANN PALFFY
NIEVES DARLING & MAH, INC.

By: 

DUSTIN LOZANO

Attorneys for Plaintiff Sunbelt Controls, Inc.

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SUMMONS
(CITACION JUDICIAL)FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:** THE SOURCE HOTEL, LLC, a California limited liability company; IRON MECHANICAL, INC., a California corporation; and DOES 1 through 20, inclusive,
(AVISO AL DEMANDADO):**YOU ARE BEING SUED BY PLAINTIFF:** SUNBELT CONTROLS, INC., a Delaware corporation,
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, California 92701

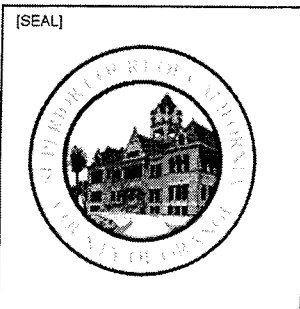
CASE NUMBER
(Número del Caso)

30-2020-01143598-CU-MC-CJC

Judge Robert J. Moss

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Dale A. Ortmann, Esq., SBN 94226
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Dustin Lozano, Esq., SBN 296518 HUNT ORTMANN PALFFY NIEVES DARLING & MAH, INC.

301 N. LAKE AVE., 7th Floor, PASADENA, CA 91101 Phone: (626) 440-5200 Fax: (626) 796-0107DATE: 06/18/2020
(Fecha)DAVID H. YAMASAKI, Clerk, by
Clerk of the Court **(Secretario)**Brenda Sanchez, Deputy
(Adjunto)**(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)****(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).****NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

Electronically Filed by Superior Court of California, County of Orange, 05/26/2020 01:37:23 PM.

CM-010

30-2020-01143598-CU-MC-CJC DAVID L. YAMASAKI, Clerk of the Court By Lirio Sanchez, Deputy Clerk. Dale A. Ortmann, Esq. / Dustin Lozano, Esq. SBN: 94226 / 296518 HUNT ORTMANN PALFFY NIEVES DARLING & MAH, INC. 301 N. LAKE AVE., STE. 700, PASADENA, CA 91101 TELEPHONE NO.: (626) 440-5200 FAX NO.: (626) 796-0107 ATTORNEY FOR (Name): Sunbelt Controls, Inc.		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Central Justice Center		
CASE NAME: Sunbelt Controls, Inc. vs. The Source Hotel, LLC, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: 30-2020-01143598-CU-MC-CJC JUDGE: Judge Robert J. Moss DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 5

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 21, 2020

Dale A. Ortmann, Esq./Dustin Lozano, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

DECLARATION OF DUSTIN LOZANO

I, Dustin Lozano, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an associate with Hunt Ortmann Palffy Nieves Darling & Mah, Inc., attorneys of record for Creditor Sunbelt Controls, Inc. I have personal knowledge of the facts stated herein except where stated upon information and belief.

2. On Friday, September 24, 2020, I met and conferred with Juliet Y. Oh, counsel of record for Debtor, regarding Debtor's new claim in its reply brief that Sunbelt's lien foreclosure action was untimely. Ms. Oh confirmed that Debtor has no objection to Sunbelt filing this surreply on this issue. A true and correct copy of the email exchange with Ms. Oh is attached as **Exhibit A**.

3. On September 28, 2021, I entered the address of the Source Hotel, 6940 Beach Blvd., Buena Park, CA 90621, into the Google Maps search bar on my computer and viewed the picture of the hotel as of May 2016. This was before Shady Bird's predecessor recorded its deed of trust. The picture shows that the hotel was constructed at that time. A true and correct screenshot copy of the picture of the Source Hotel from Google Maps as of May 2016 is attached hereto as **Exhibit B**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on this 28th day of September, 2021, at Pasadena, California.



Dustin Lozano

HUNT ORTMANN PALFFY
NIEVES DARLING & MAH, INC.
301 NORTH LAKE AVENUE, 7TH FLOOR
PASADENA, CALIFORNIA 91101-1807
Tel (626) 440-5200 • Fax (626) 796-0107

EXHIBIT A

From: Juliet Y. Oh <jyo@lnbyb.com>
Sent: Friday, September 24, 2021 11:45 AM
To: Dustin Lozano <lozano@huntortmann.com>; 'Clay Tanaka' <ctanaka@mdproperties.com>
Cc: Dale Ortmann <ortmann@huntortmann.com>; Ron Bender <RB@lnbyb.com>
Subject: RE: In re Source Hotel; Case No. 8:21-bk-10525-ES

Dustin,

The Debtor is not going to enter into a stipulation, but it has no objection to your client filing a surreply to address the issue. Just a heads up, our firm is moving offices today so our email systems will be down starting at 1pm until approximately 1pm on Monday. If you need to reach me, please use my personal email address (Juliet_noh@yahoo.com) or call me on my cell (310) 497-4602.

Thanks,
Juliet

From: Dustin Lozano <lozano@huntortmann.com>
Sent: Friday, September 24, 2021 10:51 AM
To: 'Clay Tanaka' <ctanaka@mdproperties.com>; Juliet Y. Oh <jyo@lnbyb.com>
Cc: Dale Ortmann <ortmann@huntortmann.com>
Subject: In re Source Hotel; Case No. 8:21-bk-10525-ES

Clay and Juliet,

As you know, we represent Sunbelt Controls (Sunbelt) in the superior court action and the bankruptcy proceeding involving your client, Source Hotel, LLC (Hotel). I spoke with both of you last week about the bankruptcy proceeding and the Hotel's motion authorizing the sale of assets free and clear of liens (Motion). I received last night the Hotel's reply to Sunbelt's objections to the Motion. In its reply, the Hotel contends – *for the first time* – that Sunbelt's lien foreclosure action was filed after the 90-day deadline to foreclose on the lien. This is incorrect.

As an initial matter, I do not know why you did not raise this issue with me when we spoke last week. We could have saved the time of this exchange and the need to clarify that point with the court. Moreover, neither was this issue

raised in your motion. Rather, the Hotel raised this issue *for the first time in its reply*. A surreply is therefore necessary and proper. See, *Hill v. England*, 2005 WL 3031136, (E.D. Cal. Nov. 8, 2005). It would have been best if you had raised this contention in your Motion or raised this issue during our calls and not waited until your reply brief.

Sunbelt's lien foreclosure action was timely filed. The attached order confirmation from my attorney services confirms that Sunbelt filed its complaint on April 21, 2020, which was before its deadline to file its complaint. Due to the Orange County Superior Court's shutdown due to Covid, the complaint was not conformed until May 25, 2020. Notwithstanding, the complaint was timely filed.

Before we file our surreply, I wanted to inquire if Ms. Oh will agree to sign a stipulation stating that Sunbelt's lien foreclosure action was timely filed. You have the attached order confirmation verifying the same. We can sign a stipulation to this effect or I can file a surreply and explain to the court that we just learned of this issue because it was not raised by you in our conversations or even set forth in the motion.

Please advise **today before 4:00 p.m.** whether or not the Hotel will enter into a stipulation. Otherwise, we will proceed to file our surreply.

Thanks,
Dustin



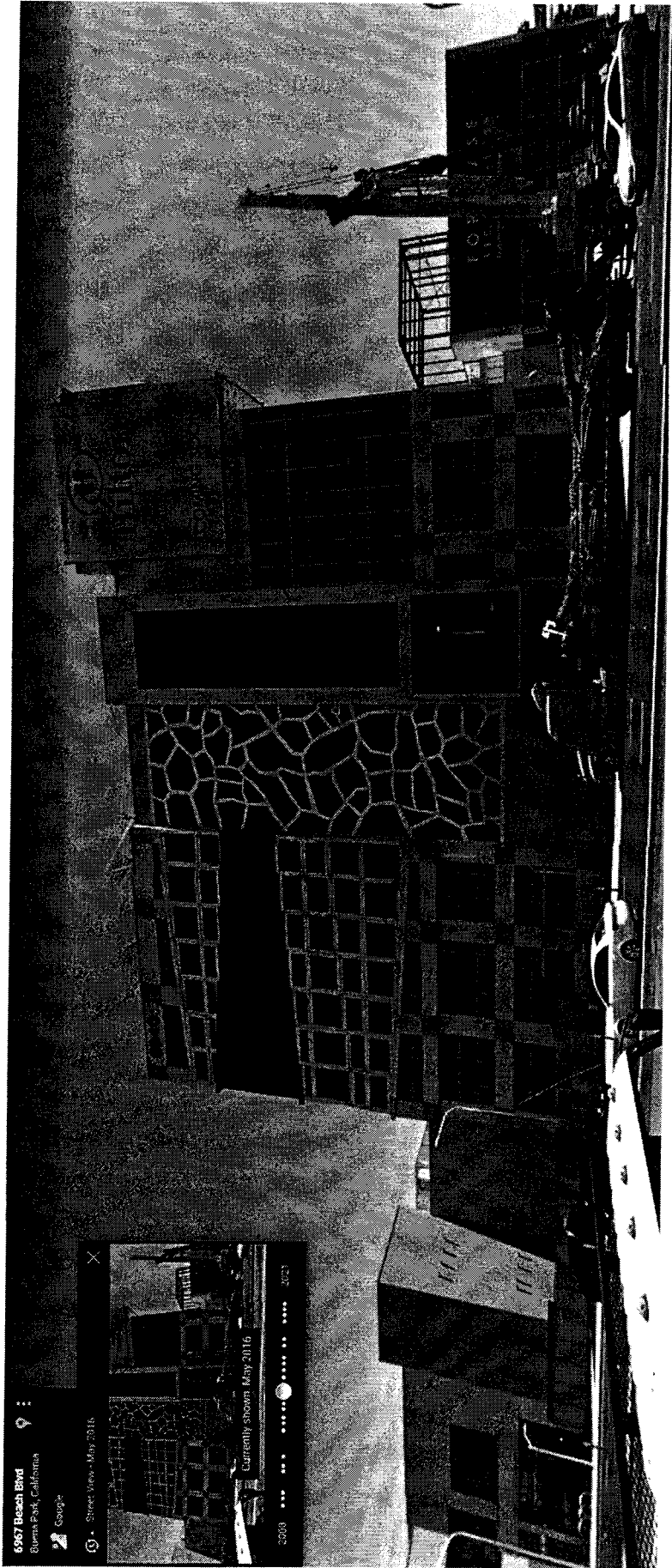
Hunt Ortmann Palffy Nieves Darling & Mah,
Inc.
301 North Lake Avenue, 7th Floor
Pasadena, CA 91101-1807

Dustin Lozano
Associate

p: 626-440-5200 www.huntortmann.com
f: 626-796-0107 Download v-Card

CONFIDENTIALITY NOTICE: This report contains information that is exempt from public release under the Freedom of Information Act, 5 U.S.C. 552, and is being furnished to you for your official use only. It is not to be distributed outside your agency. If you are not an authorized addressee, please do not disseminate, copy, or otherwise use this information. If you are an authorized addressee, please do not disseminate, copy, or otherwise use this information without the express written approval of the originating agency. If you are an authorized addressee, please do not disseminate, copy, or otherwise use this information without the express written approval of the originating agency. If you are an authorized addressee, please do not disseminate, copy, or otherwise use this information without the express written approval of the originating agency.

EXHIBIT B



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of . My business address is 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101-1807.

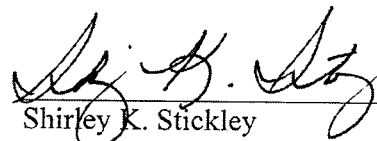
On September 28, 2021, I served the following document(s) described as **SURREPLY AND FURTHER OBJECTION OF CREDITOR SUNBELT CONTROLS, INC. TO REPLY BRIEF OF DEBTOR TO OBJECTION TO DEBTOR'S MOTION FOR ENTRY OF ORDER: (1) AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (2) AUTHORIZING THE DEBTOR'S ASSUMPTION AND ASSIGNMENT OF GROUND LEASE AND DETERMINING CURE AMOUNT; (3) WAIVING THE 14-DAY STAY PERIODS SET FORTH IN BANKRUPTCY RULES 6004(H) AND 6006(D); AND (4) GRANTING RELATED RELIEF; DECLARATION OF JOHN E. JACQUES; DECLARATION OF DUSTIN LOZANO** on the interested parties in this action by placing thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I am "readily familiar" with Hunt Ortmann Palffy Nieves Darling & Mah, Inc.'s practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Pasadena, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 28, 2021, at Pasadena, California.


Shirley K. Stickley

HUNT ORTMANN PALFFY
NIEVES DARLING & MAH, INC.
301 NORTH LAKE AVENUE, 7TH FLOOR
PASADENA, CALIFORNIA 91101-1807
Tel (626) 440-5200 • Fax (626) 796-0107

SERVICE LIST

Ron Bender, Esq.
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Attorneys for Chapter 11 Debtor and Debtor-in-Possession

Nancy S. Goldenberg
United States Trustee (SA)
411 West Fourth Street, Suite 7160
Santa Ana, CA 92701-8000

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